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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/758,080

01/16/2004

Gennadi Finkelshtain

P24757

5279

7055 7590 03/11/2009
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EXAMINER

ECHELMAYER, ALIX ELIZABETH

ART UNIT

PAPER NUMBER

1795

NOTIFICATION DATE

DELIVERY MODE

03/11/2009

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

gbpatent@gbpatent.com
pto@gbpatent.com

<p align="center">Advisory Action Before the Filing of an Appeal Brief</p>	<p>Application No. 10/758,080</p>	<p>Applicant(s) FINKELSHTAIN ET AL.</p>	
	<p>Examiner Alix Elizabeth Echelmeyer</p>	<p>Art Unit 1795</p>	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 13 February 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ They raise the issue of new matter (see NOTE below);
- (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
- The status of the claim(s) is (or will be) as follows:
- Claim(s) allowed: _____.
- Claim(s) objected to: _____.
- Claim(s) rejected: _____.
- Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

/PATRICK RYAN/
Supervisory Patent Examiner, Art Unit 1795

aee

Continuation of 11. does NOT place the application in condition for allowance because: the arguments are not persuasive.

On page 2, Applicant points out a typographical error in the Final Rejection. Claims 103-109, 112-118 and 137-144 are in fact rejected over Kamo et al. in view of Witzko et al., as is clear from the body of the rejection. The examiner apologizes for the error.

On pages 3-8, Applicant basically argues that one of ordinary skill in the art would not be motivated to use the coating of Witzko et al. on the membrane of Kamo et al. The examiner does not agree with Applicant's arguments, since the arguments address only a motivation concerned with changing or enhancing the chemical properties of the base membrane with the coating of Witzko et al. As is found in the rejection and in Witzko et al. (pages 4-5 of Final Rejection; column 2 lines 11-15 of Witzko et al.), the layer also provides mechanical stability. One of ordinary skill in the art would also be motivated to use the coating for mechanical stability, regardless of any chemical advantages from the coating. Additionally, Applicant is reminded that the "hole membrane" of Kamo et al. is in fact a hole in the housing that is covered by the polytetrafluoroethylene membrane, so the membrane is not comprised of holes as is hinted in the arguments (on page 6).

The combination of the polytetrafluoroethylene membrane of Kamo et al. and the coating as taught by Witzko et al. would inherently have the claimed surface energy, as is stated in the instant specification.

As for Applicant's argument concerning Troczynski et al., one of ordinary skill in the art would certainly recognize that the housing of a fuel cell could be used in applications that would result in mechanical stress, such as in an automobile.

Regarding Applicant's argument that the only chemicals that the membrane would be in contact with would be methane or water, and therefore would not corrode stainless steel, Applicant is reminded that both water and steam can corrode stainless steel, for example when certain ions are found in the water, where there is a weakness in the passive layer of the stainless steel or a mechanical weakness in the steel itself.